IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.5509 OF 2006
AND
WRIT PETITION NO.5503 OF 2006

Feminine And Infant Healthcare
Pvt. Ltd. & Ors. .... Petitioners
Vs.
The Vasai Janata Sahakari Bank
Limited & Ors. .... Respondents

Shri Sandesh D. Patil for the Petitioners in both the Petitions.

Shri S.A. Ghaisas for the Respondent Nos.1 and 4 in both the Petitions.

Ms V.S. Mhaispurkar, AGP, for the Respondent Nos.2 and 3 in both the Petitions.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 04, 2006

P.C:

1. Heard. Since common questions of law and facts arise in both the petitions, they were heard together and are being disposed of by this common order.

2. The petitioners challenge the orders passed by the lower authorities in exercise of power under Sections 101 and 154 of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as "the said Act". The grievance of the petitioners is that the authorities below failed to take into consideration the amounts already paid towards the repayment of loan by the

petitioners and in that regard failure on the part of the bank to give proper adjustment to such payments in accordance with the norms laid down by the Reserve Bank of India and the provisions of law applicable thereto and secondly, that the petitioners were unable to repay the loan amount on account of mistake on the part of the respondent-bank in neglecting to pay the insurance premium which was required to be paid by the bank in accordance with the terms of the contract between the parties.

3. It is also sought to be contended on behalf of the petitioners by the learned Advocate appearing for the petitioners that the impugned orders are totally non-speaking orders and they disclose non-application of mind as the impugned order under Section 154 of the said Act refers to loan amounts of Rs.56,00,000/- and Rs.28,00,000/- when according to the respondent-bank itself the loan amounts were Rs.7,50,000/- and Rs.31,78,000/-, besides even after the adjustment of the amounts already paid by the petitioners, according to the bank itself, the liability was to the tune of Rs.8,76,000/- and Rs.26,49,000/- as on 14-2-2005.

4. As regards the contention about non-application of mind on account of reference to the loan amounts as being Rs.56,00,000/- and Rs.28,00,000/-, undoubtedly,

the order passed by the revisional authority refers to the said loan amounts but the figures in that regard are not imaginary figures nor they would disclose non-application of mind as the revision application itself disclosed that initially the loan amounts were Rs.56,00,000/- and Rs.28,00,000/-. It was only in the year 1998, after adjustment of the said loans, fresh transactions were entered into and the new transactions were in relation to the loan amounts of Rs.7,50,000/- and Rs.31,78,000/- and it cannot be said that mere reference to the original loan amounts of RS.56,00,000/- and 28,00,000/- would be sufficient to contend that discloses non-application of mind by the revisional authority.

5. It is pertinent to note that in the proceedings under Section 101 of the said Act, the petitioners, apart from making a wild claim that the petitioners had repaid a substantial part of the loan amount, the petitioners had not established repayment of any specific amount/s. It is not disputed that the petitioners failed to demonstrate before the revisional authority that the said figures disclosed towards the liability which stood on 14-2-2005 were either wrong or were not correctly arrived at after adjusting the amount repaid by the petitioner. In these circumstances, the contention on behalf of the petitioners that the

impugned orders disclose non-application of mind is totally devoid of substance.

6. As regards the grievance about failure on the part of the bank to pay the insurance premium, certainly the petitioners would be entitled to seek regular remedy in that regard but that by itself will not enure to the benefit of the petitioners to refuse to repay the loan liability. It is not the case of the petitioners that the terms of the loan entitles the petitioners to refuse to repay the loan amount in case of failure on the part of the bank to pay the insurance premium regularly. In case the petitioners suffered any loss on account of the alleged negligence on the part of the bank in not paying the insurance premium, certainly the petitioners would be entitled to seek regular remedy in accordance with the provisions of law but that cannot be a ground to refuse to repay the loan liability by the petitioners.

7. The learned Advocate appearing for the petitioners also sought to rely upon the decision in the matter of **Juhu Co-operative Housing Society Ltd., Mumbai v. State of Maharashtra and others,** reported in 2004 (2) Mh.L.J. 779, while drawing attention to paras 8 and 9 thereof. Needless to say that the observations in those paras were in a case where the revisional authority had decided the matter on totally extraneous grounds and,

that too, in the absence of the parties. But that is not the case in the matter in hand and, therefore, the said decision has no application to the matter in issue.

8. In the circumstances, therefore, the impugned orders do not disclose any jurisdictional error so as to warrant interference in exercise of power under Article 227 of the Constitution of India. Hence, the petitions fail and are hereby dismissed.

(R.M.S. Khandeparkar, J.)

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